

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

CHAPTER 187

## **HOUSE BILL 2001**

AN ACT

AMENDING SECTION 42-1122, ARIZONA REVISED STATUTES; RELATING TO TAX REFUND  
SETOFF FOR DEBTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-1122, Arizona Revised Statutes, is amended to  
3 read:

4 42-1122. Setoff for debts to state agencies and courts;  
5 revolving fund; definitions

6 A. The department shall establish a liability setoff program by which  
7 refunds under sections 42-1118 and 43-1072 may be used to satisfy debts which  
8 THAT the taxpayer owes TO this state or a court. The program shall comply  
9 with the standards and requirements prescribed by this section.

10 B. If a taxpayer owes an agency or court a debt, the agency or court,  
11 by November 1 of each year, may notify the department, furnishing at least  
12 the state agency, court or program identifier, the first name, last name,  
13 middle initial OR MIDDLE NAME AND SUFFIX, and social security number AND ANY  
14 OTHER AVAILABLE IDENTIFICATION THAT THE AGENCY OR COURT DEEMS APPROPRIATE of  
15 the debtor AS SHOWN ON THE RECORDS OF THE AGENCY OR COURT, and the amount of  
16 the debt.

17 C. The department shall match the information submitted by the agency  
18 or court BY AT LEAST TWO ITEMS OF IDENTIFICATION OF THE TAXPAYER with  
19 taxpayers who qualify for refunds under section 42-1118 and:

20 1. Notify the agency or court of a potential match, the taxpayer's  
21 home address and any additional taxpayer identification numbers used by the  
22 taxpayer. Even if the taxpayer is not entitled to a refund, the department  
23 of revenue shall provide to:

24 (a) The court, the clerk of the court and the department of economic  
25 security, for child support and spousal maintenance purposes only, the home  
26 address of a taxpayer whose debt for overdue support is referred for setoff  
27 and any additional taxpayer identification numbers used by the taxpayer.

28 (b) The court, the home address and any additional taxpayer  
29 identification numbers used by the taxpayer whose debt for a court obligation  
30 is referred for setoff and who is identified by the court as a probationer on  
31 absconder status.

32 2. Request final agency or court confirmation IN WRITING OR  
33 ELECTRONICALLY AS DETERMINED BY THE DEPARTMENT within ten days of the match  
34 and of the continuation of the debt. If the agency or court fails to provide  
35 confirmation within forty-five days after the request, the department shall  
36 release the refund to the taxpayer.

37 D. An agency or court may submit updated information, additions,  
38 deletions and other changes on a quarterly or more frequent basis, at the  
39 convenience of the agency or court.

40 E. On confirmation pursuant to subsection C, paragraph 2 of this  
41 section, the agency shall notify the taxpayer, by mail to the most recent  
42 address provided by the taxpayer to the department: —

1           1. Of the intention to set off the debt against the refund due. and  
2           2. Of the taxpayer's right to appeal to the appropriate court, or to  
3 request a review by the agency pursuant to agency rule, within thirty days of  
4 the mailing of the notice.

5           F. THE TAXPAYER SHALL IN ADDITION RECEIVE NOTICE THAT IF THE REFUND IS  
6 INTERCEPTED IN ERROR THROUGH NO FAULT OF THE TAXPAYER, THE TAXPAYER IS  
7 ENTITLED TO THE FULL REFUND PLUS INTEREST AND PENALTIES FROM THE AGENCY OR  
8 COURT AS PROVIDED BY SUBSECTION O OF THIS SECTION.

9           G. The basis for a request for review AS PROVIDED BY SUBSECTION E OF  
10 THIS SECTION shall not include the validity of the claim if its validity has  
11 been established at an agency hearing, by judicial review in a court of  
12 competent jurisdiction in this or any other state or by final administrative  
13 decision and shall state with specificity why the taxpayer claims the  
14 obligation does not exist or why the amount of the obligation is  
15 incorrect. ~~If the setoff accounts for only a portion of the refund due, the~~  
16 ~~remainder of the refund shall be sent to the taxpayer.~~

17           ~~F.~~ H. If, within thirty days of the mailing of the notice, the  
18 taxpayer requests a review by the agency or provides the agency with proof  
19 that an appeal has been taken to the appropriate court, the agency shall  
20 immediately notify the department and the setoff procedure shall be stayed  
21 pending resolution of the review or appeal.

22           ~~G.~~ I. If the department does not receive notice of a timely appeal,  
23 it shall draw and deliver a warrant in the amount of the available refund up  
24 to the amount of the debt in favor of the agency and notify the taxpayer of  
25 the action by mail.

26           ~~H.~~ J. Subsections E, ~~F~~ and G, H AND I of this section do not apply  
27 to a debt imposed by a court EXCEPT THAT THE TAXPAYER SHALL RECEIVE NOTICE OF  
28 THE INTENT TO SETOFF THE DEBT AGAINST THE REFUND DUE AND THE RIGHT TO APPEAL  
29 TO THE COURT THAT IMPOSED THE DEBT WITHIN THIRTY DAYS OF THE MAILING OF THE  
30 NOTICE. THE BASIS FOR THE REQUEST FOR REVIEW SHALL NOT INCLUDE THE VALIDITY  
31 OF THE CLAIM AND SHALL STATE WITH SPECIFICITY WHY THE TAXPAYER CLAIMS THE  
32 OBLIGATION DOES NOT EXIST OR WHY THE OBLIGATION IS INCORRECT.

33           K. IF THE SETOFF ACCOUNTS FOR ONLY A PORTION OF THE REFUND DUE, THE  
34 REMAINDER OF THE REFUND SHALL BE SENT TO THE TAXPAYER. A court shall not use  
35 this section to satisfy a judgment or payment of a fine or civil penalty  
36 until the judgment has become final or until the time to appeal the  
37 imposition of a fine or civil penalty has expired.

38           ~~I.~~ L. A revolving fund is established to recover and pay the cost of  
39 operating the setoff program under this section. The department may  
40 prescribe a fee to be collected from each agency or court utilizing the  
41 setoff procedure or from the taxpayer, and the amount shall be deposited in  
42 the fund. The amount of the fee shall reasonably reflect the actual cost of  
43 the service provided. Monies in the revolving fund are subject to  
44 legislative appropriation.

1       ~~J~~. M. If agencies or courts have two or more delinquent accounts for  
2 the same taxpayer, the refund may be apportioned among them pursuant to rules  
3 prescribed by the department of revenue, except that a setoff to the  
4 department of economic security for overdue support has priority over all  
5 other setoffs.

6       ~~K~~. N. If the refund is insufficient to satisfy the entire debt, the  
7 remainder of the debt may be collected by the agency or court as provided by  
8 law or resubmitted for setoff against subsequent refunds.

9       ~~L~~. O. In the case of a refund that is intercepted in error THROUGH NO  
10 FAULT OF THE TAXPAYER under this section, the taxpayer shall be reimbursed by  
11 the agency or court with interest pursuant to section 42-1123. IN ADDITION,  
12 IF ALL OR PART OF A REFUND IS INTERCEPTED IN ERROR DUE TO AN AGENCY OR COURT  
13 INCORRECTLY IDENTIFYING A TAXPAYER AS A DEBTOR THROUGH NO FAULT OF THE  
14 TAXPAYER, THE AGENCY OR COURT SHALL ALSO PAY THE TAXPAYER A PENALTY AS  
15 FOLLOWS:

16       1. IF THE AGENCY OR COURT REIMBURSES THE TAXPAYER SIXTEEN THROUGH ONE  
17 HUNDRED EIGHTY DAYS AFTER THE AGENCY OR COURT RECEIVES NOTIFICATION THAT THE  
18 REFUND WAS ERRONEOUSLY INTERCEPTED AND THE REFUND WAS RECEIVED BY THE AGENCY  
19 OR COURT, THE PENALTY IS EQUAL TO TEN PER CENT OF THE AMOUNT OF THE REFUND  
20 THAT WAS INTERCEPTED.

21       2. IF THE AGENCY OR COURT REIMBURSES THE TAXPAYER ONE HUNDRED  
22 EIGHTY-ONE THROUGH THREE HUNDRED SIXTY-FIVE DAYS AFTER THE AGENCY OR COURT  
23 RECEIVES NOTIFICATION THAT THE REFUND WAS ERRONEOUSLY INTERCEPTED AND THE  
24 REFUND WAS RECEIVED BY THE AGENCY OR COURT, THE PENALTY IS EQUAL TO FIFTEEN  
25 PER CENT OF THE AMOUNT OF THE REFUND THAT WAS INTERCEPTED.

26       3. IF THE AGENCY OR COURT FAILS TO REIMBURSE THE TAXPAYER WITHIN THREE  
27 HUNDRED SIXTY-FIVE DAYS AFTER THE AGENCY OR COURT RECEIVES NOTIFICATION THAT  
28 THE REFUND WAS ERRONEOUSLY INTERCEPTED AND THE REFUND WAS RECEIVED BY THE  
29 AGENCY OR COURT, THE PENALTY IS EQUAL TO TWENTY PER CENT OF THE AMOUNT OF THE  
30 REFUND THAT WAS INTERCEPTED.

31       P. THE TIME PERIODS SET FORTH IN SUBSECTION O OF THIS SECTION SHALL BE  
32 STAYED DURING A REVIEW OF AN AGENCY DECISION PURSUANT TO SECTION 25-522.

33       ~~M~~. Q. Except as is reasonably necessary to accomplish the purposes of  
34 this section, the department shall not disclose under this section any  
35 information in violation of chapter 2, article 1 of this title.

36       ~~N~~. R. An agency or court shall not enter INTO an agreement with a  
37 debtor for:

38       1. The assignment of any prospective refund to the agency or court in  
39 satisfaction of the debt.

40       2. Payment of the debt if the debt has been confirmed to the  
41 department for setoff under subsection C, paragraph 2 of this section.

42       ~~O~~. S. If a tax refund is based on a joint income tax return and the  
43 department of economic security receives a written claim from the  
44 nonobligated spouse within forty-five days after the notice of a setoff for  
45 overdue child support, the setoff only applies to that portion of the refund

1 due to the obligor. The nonobligated spouse shall provide to the department  
2 of economic security copies of both the obligated and nonobligated spouse's  
3 federal W-2 forms and evidence of estimated tax payments supporting the  
4 proportionate share of each spouse's payment of tax. The department of  
5 economic security shall retain the amount of the set off refund due to the  
6 obligated spouse determined by a proration based on the tax payments of each  
7 spouse by estimated tax payment or tax withheld from wages.

8 P. T. For the purposes of this section:

9 1. "Agency" means a department, agency, board, commission or  
10 institution of this state. Agency also means a corporation that is under  
11 contract with this state and that provides a service that would otherwise be  
12 provided by a department, agency, board, commission or institution of this  
13 state, if the contract specifically authorizes participation in the liability  
14 setoff program and the attorney general's office has reviewed the contract  
15 and approves such authorization. The participation in the liability setoff  
16 program shall be limited to debt related to the services the corporation  
17 provides for or on behalf of this state.

18 2. "Court" means all courts of record, justice courts, municipal  
19 courts and police courts.

20 3. "Debt" means an amount over fifty dollars owed to an agency or  
21 court by a taxpayer and may include a judgment in favor of this state or a  
22 political subdivision of this state, interest, penalties, charges, costs,  
23 fees, fines, civil penalties, surcharges, assessments, administrative charges  
24 or any other amount. Debt also includes monies owed by a taxpayer for  
25 overdue support and referred to the department of economic security for  
26 collection.

27 4. "Overdue support" means a delinquency in court ordered payments for  
28 spousal maintenance or support of a child or for spousal maintenance to the  
29 parent with whom the child is living if child support is also being enforced  
30 pursuant to an assignment or application filed under 42 United States Code  
31 section 654(6) or other applicable law.

APPROVED BY THE GOVERNOR APRIL 24, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2006.